

the subject-matter of the inquiry beyond it. I am supported in this view by the cases of *Rex v. Bradford*⁽⁵⁾ and *Reg. v. Manchester Justices*⁽⁶⁾. The following passage from the judgment of Channell, J. in the latter case appears to me to be in point:—

"But the case of *Reg. v. Allmey* (35 J.P. 534) decides that the house must be a dwelling-house in the sense that somebody must sleep there. That case, therefore, assuming it to be good law.....shews that.....no person who does not sleep on the premises is entitled to have a licence to sell beer under the Act of 1840. That being so, the justices in granting their certificate to Mr. Robinson exceeded their jurisdiction. It is true that they considered the question whether he was a person qualified to hold the licence, and they came to the conclusion that he was. But it seems to me to be clear that a tribunal cannot give itself a jurisdiction which it has not got by taking an erroneous view of the law."

In my opinion under the wording of paragraph (m) in section 13(1) of the Ordinance, as I read it, what the Board has to decide is whether the owner of the building intends to demolish it for the purpose of rebuilding. That is the basic issue which they have to decide. Whether the party who is before them is or is not the owner of the building is, in my view, a preliminary question, and if it turns out that the owner of the building is not in fact before the tribunal then it appears to me that they can have no jurisdiction to arrive at any determination regarding his intentions; nor have they jurisdiction to reach a determination about the intention of someone who is not the owner of the building.

As I read the decided cases the distinction that has to be drawn is between those cases where the inferior tribunal has misconstrued the law in the course of deciding an issue properly before it (in which case the decision could only be rectified by way of appeal); and those cases where the tribunal has misread the law so as to give itself an apparent jurisdiction which, on a correct view of the law, it does not possess. In my opinion, upon a correct view of the law, the Rent Board in this case exceeded its jurisdiction so that its proceedings properly come within the purview of *certiorari*.

For these reasons the application for *certiorari* must be allowed and the certificate of the Board quashed.

Application allowed.

Solicitor for the applicants: *Lim Cheng Ean.*

Solicitor for the respondent: *Ong Huck Lim.*

ABUBAKAR BIN ISMAIL v. REGINA.

[A. Cr. J. (Brown, J.) November 4, 1953]

[Singapore — Magistrates Appeal No. 111 of 1953]

Road Traffic Ordinance, s. 80(1)(a) — False Statement by Licensing Officer — Evidence of similar acts.

The appellant, an Assistant Licensing Officer, was convicted on 2 charges with making a false statement for the purpose of obtaining the grant of a driving licence. In each case the application form was endorsed by the appellant to the effect that he had seen the applicant's Federation driving licence, which thus exempted the applicant from the necessity of passing a driving test in Singapore. Evidence to show similar endorsements by the appellant was produced. One of the grounds of appeal was whether such evidence of similar acts was admissible.

By section 11(2) of the Evidence Ordinance — "Facts not otherwise relevant are relevant if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable."

The fact in issue was whether, upon the dates referred to in the charges, Federation driving licences were produced to the appellant or not. Does the fact that on the 8 previous occasions the appellant made similar endorsements without any Federation driving licence being produced make it "highly probable" that no Federation driving licences were produced upon the 2 dates which are material to these charges? Or does it merely tend to prove that the appellant, having done this before, is the sort of man who would probably do it on the 2 occasions charged.

Held: the evidence of similar acts in this case went far beyond showing that the appellant, having committed similar acts previously, was a person who was likely to have committed the 2 acts with which he was charged, and that the evidence of the previous 8 cases was relevant to the issue which was before the Court.

Held also: the 8 witnesses who gave evidence as to the previous similar acts must be regarded as accomplices.

Cases Referred to:—

- (1) *Rex v. Bond* 1906, 2 K.B. at p. 394.
- (2) *Thompson v. The King*, (1919) A.C. at p. 232.
- (3) *Rex v. Mohamed Farid*, 30 Cr. App. R. 168.

MAGISTRATE'S APPEAL.

N. A. Mallal (C. H. Koh with him) for the appellant.

A. H. Simpson (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Brown, Ag. C.J. : — The appellant was convicted upon two charges under section 80(1)(a) of the Road Traffic Ordinance with making a false statement in his capacity as Assistant Licensing Officer for the purpose of obtaining the grant of a driving licence to one Ng Jim Sin on the 30th of October 1952 (on the first charge) and to one Chan How Aik on the 4th of November 1952 (on the second charge). The facts

were that the appellant was entrusted in his capacity as Assistant Licensing Officer with the duty of approving applications for driving licences. In each case the application form was signed by the applicant in blank and filled in by the appellant. In each case the application form was endorsed by the appellant with a statement to the effect that he had seen the applicant's Federation driving licence, which thus exempted the applicant from the necessity of passing a driving test in Singapore. In each case the particulars of the Federation driving licence which the appellant filled in on the form were the particulars of a licence which had not been issued to the applicant. And in each case the main issue of fact was whether the applicant had produced a Federation driving licence for the appellant's inspection or not. Ng Jim Sim and Chan How Aik both said that they paid money to one Koh Chwee Kim for his services in getting the driving licences. All three men swore that they produced no Federation driving licences to the appellant. The appellant swore that they did.

The appeal has been argued upon four grounds. The first ground is that the learned District Judge, having held that Ng Jim Sim and Koh Chwee Kim were accomplices, ought not to have convicted upon the first charge without corroboration of their evidence. The learned District Judge could hardly have taken greater pains to warn himself of the danger of convicting upon their uncorroborated evidence, and his grounds of decision show that he had the law most fully in mind. In the result he came to the conclusion that this was one of those exceptional cases in which it was right to convict without corroboration. He has given four reasons for coming to this conclusion. But I think that he might well have added two others. One is that while, as he says, Ng Jim Sim must have known that he was engaged in a dishonest transaction, he was not concerned to know or to care what part the appellant played in the transaction. He had paid Koh Chwee Kim \$180 to get him a licence. How he got it was no concern of his. The second reason is that, the object being to obtain a driving licence, it is inconceivable that if there had been a genuine Federation driving licence it should not have been produced.

The second ground of appeal relates to the second charge and is that the learned District Judge was wrong in holding that the evidence of the accomplices Chan How Aik and Koh Chwee Kim was corroborated by the Chief Counter Clerk Lim Kim Keat. The crux of the whole case was whether a Federation driving licence was produced or not. Lim Kim Keat said that it was not. He said that when he asked Chan How

Aik to produce his Federation licence he did not produce it and replied that it was with the appellant. But the matter does not end there because when Lim Kim Keat brought the application form to Mr. Rodriguez, his suspicions being aroused, the appellant came in and before Lim Kim Keat could say anything he expressed his anxiety with regard to this matter and asked what was wrong with the form. Next day Lim Kim Keat was shown what purported to be a Federation driving licence. Believing that this was a forgery in the handwriting of the appellant his suspicions were in no way allayed, and he reported the matter to his superior officer, Mr. Marriott. In my view Lim Kim Keat's evidence affords corroboration of the evidence of Chan How Aik and Koh Chwee Kim upon the vital point in this case, namely, that no Federation driving licence was produced.

The third ground of appeal relates to what has been called the "similar acts" evidence. The prosecution called evidence to prove that on eight occasions, between the 29th of September and the 29th of October 1952, the appellant had made similar endorsements to the effect that he had seen Federation driving licences in the case of eight applicants whose forms he had filled in, and that in none of the eight cases had the applicant produced a Federation driving licence for his inspection.

"The general rule of law applicable in such cases can be clearly stated. It is that, apart from express statutory enactments, evidence tending to show that the accused had been guilty of criminal acts other than those covered by the indictment cannot be given unless the acts sought to be proved are so connected with the offence charged as to form part of the evidence upon which it is proved: see *Reg. v. Rearden* (4 F. & F. 76); or are material to the question whether the acts alleged to constitute the crime were designed or accidental: see *Reg. v. Gray* (4 F. & F. 1102); or to rebut a defence which would otherwise be open to the accused: see *Makin v. Attorney-General for New South Wales* (1894 A.C. 57). As is pointed out in the last mentioned case, the statement of these general principles is easy; in applying them it is often very difficult to draw the line and decide whether a particular piece of evidence is admissible or not."

This quotation is from *Rex v. Bond*⁽¹⁾. In the present case it is said that the evidence to which objection is taken was admissible to rebut the defence that what purported to be Federation driving licences were in fact produced to the appellant but were forgeries. It is said that the issue in these charges was whether the endorsements which the appellant made on the two application forms which were the subject of the charges were false to his knowledge, and that the fact that he had, within a month shortly before the two occasions in respect of which he was charged, made similar endorsements in eight cases without having the Federation licences produced to him was material to that issue.

By section 11(2) of our Evidence Ordinance —

"Facts not otherwise relevant are relevant if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable."

The fact in issue was whether, upon the dates referred to in the charges, Federation driving licences were produced to the appellant or not. Does the fact that on the eight previous occasions the appellant made similar endorsements without any Federation driving licences being produced make it "highly probable" that no Federation driving licences were produced upon the two dates which are material to these charges? Or does it merely tend to prove that the appellant, having done this before, is the sort of man who would probably do it on the two occasions charged? As Lord Sumner said in *Thompson v. The King*⁽²⁾ :—

"No one doubts that it does not tend to prove a man guilty of a particular crime to show that he is the kind of man who would commit a crime, or that he is generally disposed to crime and even to a particular crime; but, sometimes for one reason sometimes for another, evidence is admissible, notwithstanding its general character, to show that the accused had in him the makings of a criminal, for example, in proving guilty knowledge, or intent, or system, or in rebutting an appearance of innocence which, unexplained, the facts might wear."

I have come to the conclusion that the evidence which is objected to went far beyond showing that the appellant, having committed similar acts previously, was a person who was likely to have committed the two acts with which he was charged, and that the evidence of the previous eight cases was relevant to the issue which was before the Court. The defence was that the prosecution witnesses were lying when they said that they had produced no Federation driving licences, and that they had produced licences which he believed to be genuine but which were in fact forgeries. If they were forgeries, this evidence showed that on 10 occasions within the space of five weeks he was taken in by forged licences; and the appellant admitted to seeing an average of only 4 or 5 Federation driving licences in the course of a day. The issue was: did he make the two false statements with which he was charged knowing that they were false? His defence was: "I made them, but I was deceived by forgeries." It seems to me to be impossible to say that the fact that he had done the same thing eight times within a month immediately prior to the two occasions on which he was charged was irrelevant to the issue of whether he made the two false endorsements knowing that they were false.

There only remains to consider ground 4 of the appeal, which is that all the eight witnesses who were the appellants in the "similar acts" evidence were accomplices and that the learned District Judge did not

address his mind to that fact. It is clear, upon the authority of *Rex v. Mohamed Farid*⁽³⁾ that although the eight witnesses took part in different transactions from those with which the appellant was charged they must be regarded as accomplices, and that the learned District Judge, who was not referred to the case of *Rex v. Mohamed Farid*⁽³⁾, did not appreciate that fact. But in five of the eight cases the number of the licence which the appellant had inserted in the application form was proved to belong to a different person, thus providing the plainest possible corroboration of the witnesses' story.

The appeal must be dismissed.

Appeal dismissed.

Solicitors for the appellant: C. H. Koh & Co.

NANYANG MANUFACTURING CO. v. THE COLLECTOR OF LAND REVENUE, JOHORE.

[A. C. J. (Bahagiar, J.) December 13, 1953]

[Johore Bahru — Land Reference No. 5 of 1953]

Land laws — Land acquisition — Fair market value, what is — Methods of valuation — Expert opinion — Safest test.

This was a reference to Court of an award made by the Collector regarding the acquisition of land required for the University of Malaya. The land consisted of 20 out of over 33 acres held by the applicants and most of the area acquired is mainly shallow ravine and was less accessible than the portion left out.

The only point for the determination of the Court was what was the fair market value under section 29(1) (a) of the Land Acquisition Enactment on the date of publication of the Declaration under section 6.

Held, following the definition in *Kailas Chandra v. Secretary of State*⁽¹⁾: the market value of land may be roughly described as the price that an owner willing, and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for sale and purchase of the land.

In arriving at this price there are 3 recognised methods of valuation, viz:

- (1) opinion of experts;
- (2) the price paid, within a reasonable time, in bona fide transactions of purchases of lands acquired, or of the lands adjacent to the land acquired and possessing similar advantages; and
- (3) a number of years' purchase of the actual or immediately prospective, profit from the lands acquired.

In considering expert opinion too much weight should not be given unless it is supported by, or coincides with, other evidence. Neither should the Court consider an offer to purchase. The safest guide to determine the fair market value is evidence of sales of the same land or similar land in the neighbourhood, after making due allowance for all the circumstances.

Cases referred to:—

- (1) *Kailas Chandra v. Secretary of State*, 17 Cal. L.J. 35;